

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
THIRD REGION**

**CARR FINISHING SPECIALTIES, INC.,  
G.P.C. CONSTRUCTION INC., and  
NORTHEAST INDUSTRIAL SIDING, INC.,  
alter egos and SANDRA J. CARR,  
GALVIN P. CARR, III and MELISSA LAINHART,  
Individuals**

**And**

**Case 3-CA-27264**

**INTERNATIONAL ASSOCIATION OF BRIDGE,  
STRUCTURAL, ORNAMENTAL AND REINFORCING  
IRON WORKERS**

**AFFIDAVIT IN OPPOSITION TO GENERAL COUNSEL'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT AND  
TO PRECLUDE EVIDENCE**

**STATE OF NEW YORK    )  
                                  )  
COUNTY OF ONONDAGA)    SS.:**

**ALAN R. PETERMAN**, being duly sworn, deposes and states that:

1. I am an attorney admitted to practice law before the Courts of the State of New York, the United States District Courts for the Eastern, Southern, Northern and Western District of New York, the United States Court of Appeals for the Second Circuit and the United States Supreme Court. I am a partner in the law firm of Hiscock & Barclay, LLP, attorneys for Respondents Carr Finishing Specialties, Inc., Northeast Industrial Siding, Inc., Sandra Carr, Galvin P. Carr, III and Melissa Lainhart (collectively the "Respondents").

2. I have personal knowledge of the proceedings had heretofore herein and submit this affidavit in opposition to the General Counsel's Motion for Partial Summary Judgment and to Preclude Evidence.

3. The General Counsel's Motion for partial Summary Judgment is procedurally defective.

4. Section 102.24 of the Board's Rules and Regulations states, in relevant part, that:

(a) . . . All motions for default judgment, summary judgment or dismissal made prior to the hearing *shall* be filed with the Board in writing pursuant to the provisions of § 102.50. . . . All motions filed with the Board, including motions for default judgment, summary judgment, or dismissal, *shall* be filed with the Executive Secretary of the Board in Washington, D.C. . . .

(b) . . . Upon receipt of a motion for default judgment, summary judgment, or dismissal, the Board may deny the motion or issue a notice to show cause why the motion should not be granted. If a notice to show cause is issued, the hearing, if scheduled, will normally be postponed indefinitely.

5. The General Counsel filed the Motion for Partial Summary Judgment with the Administrative Law Judge Section, not the Executive Secretary.

6. Although Section 102.35(8) of the Rules does give an administrative law judge the authority to dispose of motions for summary judgments, that Section applies only to those motions made after the opening of the hearing, not prior to the hearing.

7. Pursuant to Rule 102.25, motions made prior to the opening of a hearing are to be referred to the administrative law judge by the chief administrative law judge.

8. The General Counsel did not follow the proper procedure in the instant case.

9. Upon information and belief, the General Counsel filed the motion with the Administrative Law Judge Section to avoid the Order to Show Cause/adjournment procedure called for in Section 102.24(b).

10. Although Respondents admit to the mathematical correctness of the General Counsel's calculations, such admission is not an admission that any such back pay is due and

owing to Respondent Carr Specialty Finishing former employees or to the employees of GPC Construction, Inc. by any of the Respondents

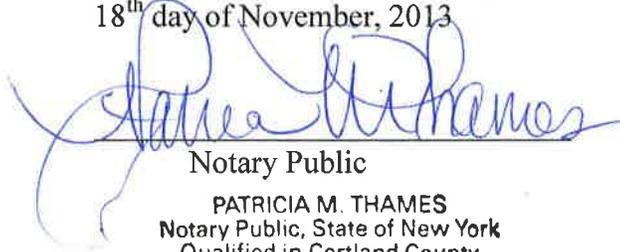
11. Nor is the Respondents' admission any admission that any back pay is due and owing any former employee under the Davis-Bacon Act or Article 8 of the New York Labor Law.

12. Although Respondents do not anticipate introducing any evidence challenging the accuracy of the General Counsel's calculations, the General Counsel's request for a preclusion order is better left to the hearing on the Compliance Specification in the event that Respondents' proffer any such evidence.



ALAN R. PETERMAN

Sworn to before me this  
18<sup>th</sup> day of November, 2013



Notary Public

PATRICIA M. THAMES  
Notary Public, State of New York  
Qualified in Cortland County  
01TH4867615  
My Commission Expires Aug. 18, 2014

## CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2013, I filed Respondents Carr Finishing Specialties, Inc., Northeast Industrial Siding, Inc., Sandra J. Carr, Galvin P. Carr, III and Melissa Lainhart's Affidavit in Opposition to General Counsel's Motion for Partial Summary Judgment and to Preclude Evidence upon the other parties to this proceeding as follows:

National Labor Relations Board  
Third Region  
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**Via Electronic Filing and First Class Mail**

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Alan R. Peterman